

By: Ellis

S.B. No. 472

A BILL TO BE ENTITLED

AN ACT

relating to procedures for asserting taking claims arising from the enforcement of health and safety laws.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 112 to read as follows:

CHAPTER 112. PROCEDURES FOR TAKING CLAIMS ARISING FROM ENFORCEMENT OF HEALTH AND SAFETY LAWS

Sec. 112.001. DEFINITIONS.

(a) In this chapter:

(1) "Affected parties" means the claimant and the governmental entity who are directly affected by an act or agreement required or permitted by this chapter and does not include other parties to an action who are not directly affected by that particular act or agreement.

(2) "Claimant" means a person, including a decedent's estate, seeking recovery of damages or injunctive relief in a taking claim. All persons claiming to have sustained damages as the result of a taking are considered a single claimant.

(3) "Defendant" means a governmental entity against whom a taking claim is asserted. The term includes a third-party defendant, cross-defendant, or counterdefendant.

(4) "Economic damages" has the same meaning as in Section 41.001.

1 (5) "Expert" means a person giving opinion testimony
2 who is qualified to do so under the Texas Rules of Evidence.

3 (6) "Expert report" means a written report by an
4 expert providing a fair summary of the expert's opinion(s) as of the
5 date of the report, which report shall provide:

6 (A) if the claim alleges that the taking has
7 denied the owner all economically viable use of the property, a
8 statement that the expert has concluded the taking has denied the
9 owner of such use, together with a statement of the facts on which
10 the expert relied in reaching the said conclusion;

11 (B) if the claim alleges that the taking has made
12 the property unusable for its intended purpose, a statement that
13 the expert has concluded the taking has made the property unusable
14 for its intended purpose, together with a statement of the facts on
15 which the expert relied in reaching the said conclusion;

16 (C) if the claim alleges that the taking has
17 interfered with the owner's investment-back expectations, a
18 statement that the expert has concluded the taking interfered with
19 such expectations, together with a statement of the facts on which
20 the expert relied in reaching the said conclusion; and

21 (D) if the claim alleges that an owner has
22 sustained economic damages as a result of the taking:

23 (i) a statement that the expert has
24 concluded the taking has resulted in economic damages sustained by
25 the owner as a result of the taking;

26 (ii) a good-faith estimate of the amount of
27 the said damages;

1 (iii) a statement of the facts on which the
2 expert relied in making the good-faith estimate; and

3 (iv) an explanation of why the said damages
4 are not de minimis when compared to the benefit, if any, to the
5 public resulting from the taking.

6 (7) "Governmental entity" has the same meaning as in
7 Section 2007.002, Government Code.

8 (8) "Owner" has the same meaning as in Section
9 2007.002, Government Code.

10 (9) "Taking" has the same meaning as in Section
11 2007.002, Government Code.

12 (10) "Taking claim" means a cause of action against a
13 governmental entity for a taking.

14 (b) Any legal term or word of art used in this chapter, not
15 otherwise defined in this chapter, shall have such meaning as is
16 consistent with common law.

17 Sec. 112.002. NOTICE OF TAKING CLAIM.

18 (a) Any person or his authorized agent asserting a taking
19 claim shall give written notice of such claim by certified mail,
20 return receipt requested, to the governmental entity against which
21 such claim is being made at least 60 days before the filing of a suit
22 in any court based upon a taking claim.

23 (b) The notice required by Subsection (a) shall:

24 (1) State the sender's mailing address;
25 (2) Describe in reasonable detail the facts supporting
26 the claim; and

27 (3) Be delivered in person, by third-party delivery,

1 or by certified mail, return receipt requested, to the person
2 described in Section 101.102(c) to receive service of citation in
3 suits under Chapter 101.

4 (c) In pleading subsequently filed in any court, each party
5 asserting a taking claim shall state that it has complied fully with
6 the provisions of this section and shall provide such evidence
7 thereof as the judge of the court may require to determine if the
8 provisions of this chapter have been met.

9 (d) Notice given as provided in this chapter shall toll the
10 applicable statute of limitations to and including a period of 75
11 days following the giving of the notice, and this tolling shall
12 apply to all parties and potential parties.

13 Sec. 112.003. RESPONSE TO NOTICE OF TAKING CLAIM.

14 (a) No fewer than 45 days after receipt of a notice required
15 by Section 112.002(a), the governmental entity shall deliver to the
16 sender in person, by third-party delivery, or by certified mail,
17 return receipt requested, a response stating whether or not the
18 governmental entity contends in good faith that one or more of the
19 facts described by the claimant in the notice required by Section
20 112.002(a) were the result of the governmental entity's enforcement
21 of one or more laws enacted for the protection of public health or
22 safety and, if yes, identifying the said law or laws.

23 (b) If the response required by Subsection (a) does not
24 state that one or more of the facts described in the claimant's
25 notice were the result of the governmental entity's enforcement of
26 one or more laws enacted for the protection of public health or
27 safety, Section 112.004 does apply to the taking claim.

1 Sec. 112.004. EXPERT REPORT.

2 (a) If a pleading of a claimant filed in any court may be
3 fairly construed to make one or more of the allegations described in
4 Section 112.001(a)(6), the claimant shall, not later than the 120th
5 day after the date the original petition is filed, serve on each
6 party or the party's attorney one or more expert reports, with a
7 curriculum vitae of each expert listed in the report, for each
8 governmental entity against which a taking claim is asserted. The
9 date for serving the report may be extended by written agreement of
10 the affected parties. Each defendant whose conduct is implicated
11 in a report must file and serve any objection to the sufficiency of
12 the report not later than the 21st day after the date it was served,
13 failing which all objections are waived.

14 (b) If, as to a defendant, an expert report has not been
15 served within the period specified by Subsection (a), the court, on
16 the motion of the affected governmental entity, shall, subject to
17 Subsection (c), enter an order that:

18 (1) awards to the affected governmental entity
19 reasonable attorney's fees and costs of court incurred by the
20 governmental entity; and

21 (2) dismiss the claim with respect to the governmental
22 entity, with prejudice to the refiling of the claim.

23 (c) If an expert report has not been served within the
24 period specified by Subsection (a) because elements of the report
25 are found deficient, the court may grant one 30-day extension to the
26 claimant in order to cure the deficiency. If the claimant does not
27 receive notice of the court's ruling granting the extension until

1 after the 120-day deadline has passed, then the 30-day extension
2 shall run from the date the plaintiff first received the notice.

3 (d) Notwithstanding any other provision of this section, a
4 claimant may satisfy any requirement of this section for serving an
5 expert report by serving reports of separate experts regarding
6 different issues related to the taking claim.

7 (e) A court shall grant a motion challenging the adequacy of
8 an expert report only if it appears to the court, after hearing,
9 that the report does not represent a good faith effort to comply
10 with the definition of an expert report in Section 112.001.

11 (f) Until a claimant has served the expert report and
12 curriculum vitae as required by Subsection (a), all discovery in a
13 taking claim is stayed except for the acquisition by the claimant of
14 information by means of:

15 (1) written discovery as defined by Rule 192.7, Texas
16 Rules of Civil Procedure;

17 (2) depositions on written questions under Rule 200,
18 Texas Rules of Civil Procedure; and

19 (3) discovery from nonparties under Rule 205, Texas
20 Rules of Civil Procedure.

21 (g) Notwithstanding any other provision of this section,
22 after a taking claim is filed, all claimants, collectively, may
23 take not more than two depositions before the expert report is
24 served as required by Subsection (a).

25 Sec. 112.005. APPEAL FROM INTERLOCUTORY ORDER.

26 (a) A governmental entity may appeal from an interlocutory
27 order of a court that:

1 (1) denies a motion for summary judgment filed in good
2 faith by the government entity on one or more elements of a taking
3 claim; or

4 (2) denies a motion filed in good faith by the
5 governmental entity under Section 112.004(b).

6 (b) An interlocutory appeal under Subsection (a) stays all
7 other proceedings in the trial court pending resolution of that
8 appeal.

9 Sec. 112.006. ALTERNATIVE DISPUTE RESOLUTION. Chapter 154
10 applies to a taking claim.

11 SECTION 2. This Act takes effect September 1, 2013.